

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEON ROBINSON,)	
)	
Petitioner,)	
)	
v.)	C.A. No. 04-12254-MLW
)	
LOIS RUSSO)	
)	
Respondent.)	

ORDER

WOLF, D.J.

June 22, 2005

The petitioner, awaiting trial in state court on charges of first degree murder and possession of a firearm, has filed a petition under 28 U.S.C. §2254 challenging the denial of bail and his detention awaiting trial. Because the petitioner is a pretrial detainee, his petition should be filed under 28 U.S.C. §2241, not 28 U.S.C. §2254.

In order to file a petition under 28 U.S.C. §2254, a petitioner must be in custody "pursuant to the judgment of a state court." 28 U.S.C. §2254(a). Because the petitioner is in pretrial detention, he should file under §2241, the general habeas statute. See Gonzalez v. Justices of the Municipal Court of Boston, 382 F.3d 1, 6 (1st Cir. 2004) (holding that a pretrial detainee should properly proceed under §2241 and not §2254). See also McNeely v. Blanas, 336 F.3d 822, n.1 (9th Cir. 2003) (characterizing habeas claim as properly under §2241, not §2254, because petitioner was a

pretrial detainee); Medberry v. Crosby, 351 F.3d 1049, 1059 (11th Cir. 2003) ("State pre-trial detention...might violate the Constitution or the laws or treaties of the United States. Yet a person held in such pre-trial detention would not be 'in custody pursuant to the judgment of a State court.' Such a prisoner would file an application for a writ of habeas corpus governed by §2241 only."); and Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 503 (1973) (Rehnquist, J., dissenting) ("Section 2254 pertains only to a prisoner in custody pursuant to a judgment of conviction of a state court...").

The petitioner is hereby ORDERED to file an Amended Petition under 28 U.S.C. §2241 within thirty (30) days of receipt of this Order.

As the petitioner has indicated that he wishes to proceed in forma pauperis, he is further ORDERED to file an Application to Proceed Without Prepayment of Fees under 28 U.S.C. §1915.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE